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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/525,286

02/16/2005

Jasper Zuidervaart

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04/26/2006

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

LANDRUM, EDWARD F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/525,286

Applicant(s)

ZUIDERVAART ET AL.

Examiner

Edward F. Landrum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14, 15 and 17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 February 2005 and 27 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claims 14, 15, and 17 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
2. This application contains claims directed to the following patentably distinct species:

Applicant must select between the following species.

- a) The periodical motion is substantially elliptical
- b) The periodical motion is substantially rectangular, triangular, circular, or square shaped

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears to be generic.

3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

4. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14, 15, and 17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

6. The amendment filed 2/27/2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figure 8, which shows the relative motion of the two cutting blades. The disclosure, specifically the sections stated in the remarks does not state what is shown in Figure 8.

Applicant is required to cancel the new matter in the reply to this Office Action.

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. In view of Figure 8 being viewed as new matter, the drawing objection of the previous action stands. Therefore, the actuator affecting the periodical motion of both the shaving head and the cutting member, and the first and second cutting members being effected by separate periodical motions must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

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replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not describe how the cutting members (17 and 19) are effected

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by separate periodical motions when both cutting members are attached to the same carrier member (25).

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 9, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Balamuth et al (U.S Patent No. 3,756,105), hereinafter Balamuth.

Balamuth teaches (see Figures 1 and 2) a device for shaving hair comprising a base portion (12), a shaving head (24), and a cutting member (30), within the shaving head (24), having two distinct motions, the second motion being closer to a users skin and directed away from the cutting direction when the shaver is held a specific way. An actuator (62) generates the periodical motion of the cutting member (30) relative to the shaving head, and generates a second periodical motion of shaving head (24) which is in turn provides a second periodical motion to an outer cutting member (25)

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 4-6, 9, 10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaler (U.S Patent No. 1,788,547), in view of Motta (U.S Patent No. 5,007,169).

Shaler teaches (see Figures 1-5) a shaving apparatus comprising a base portion (11) having a grip (10). An actuator (see Figures 1 and 2) is used to effect the periodical motion of a blade (44) with a cutting edge. Motion of the blade is in a direction transverse to the guiding edge (Pg. 2, lines 40-42).

Shaler teaches all of the elements of the current invention as stated above except the second motion of the periodical motion being closer to the skin than the first motion of the periodical motion; the motion of the blade being elliptical; specific amplitudes for the elliptical motion of the shaving unit; and the actuator effecting a joint periodical motion of the shaving head and the cutting member relative to the base portion.

Motta teaches a shaving apparatus with a cutting unit having an elliptical periodical motion composed of a first and second motion (Col. 4, lines 58-67), capable of being changed depending on the dimensions of slot (265). Depending on how the shaver is held the second motion is closer to the skin being shaved and directed opposite the cutting direction. Periodical motion of the cutting unit is controlled by an actuator located inside the handle of the shaver (see Figure 1) that conveys a periodical motion, having major and minor axis, to both the shaving head and the cutting member. Motion of the cutting unit (Col. 4, lines 39-42) can be changed by changing the size of a slot (265).



It would have been obvious to have modified Shaler to incorporate the teachings of Motta to make the shaving unit capable of oscillatory motion. Incorporating an updated actuator and slot would allow a manufacturer to vary and change the types of oscillatory motion based on what was found to work best. Oscillatory movement transverse to the cutting edge, much like oscillating saws, would also allow the user of the shaving unit to let the movement of the shaving unit press the blade and perform the cutting action rather than the user having to apply a force to press the blade onto his or her skin to perform the cutting stroke. Furthermore, allowing the entire head to move instead of just the blade would allow a guard member on the head to oscillate with the blade thereby preventing injuries due to the blade oscillating beyond the edge of the guard member.

The modified device of Shaler fails to explicitly state specific ranges for the lengths of both the major and minor axis that it would have been an obvious matter of design choice to create a slot that produced the most efficient and comfortable shave attainable because discovering the optimal size slot would have been a mere design consideration based on what was found to be the best feel attainable in relation to the most efficient movement of the shaving unit. Such a modification would have involved only routine skill in the art to accommodate the optimal range requirement. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges only involves routine skill in the art. In re Aller, 105 USPQ 233.

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14. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Shaler in view of Lowery et al (U.S Patent No. 4,744,144), hereinafter Lowery.

The modified device of Shaler teaches all of the elements of the current invention as stated above except for the periodical motion of the cutting member cutting at a specific frequency, specifically about 200 Hz.

Lowery teaches (Col. 7, lines 35-39) the optimal frequency for the periodical motion of a shaving unit being approximately 200 Hz.

It would have been obvious to have modified the modified device of Shaler to incorporate the teachings of Lowery to produce a shaving unit that operated at the optimal frequency to promote a closer and more comfortable shave.

15. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Shaler in view of Apprille et al (U.S Patent No. RE36,816), hereinafter Apprille.

The modified device of Shaler teaches all of the elements of the current invention as stated above except for the shaving device having a skin contact member which defines a skin contact surface, where the major axis and the skin contact surface are substantially parallel to each other.

Apprille teaches (see Figure 7) the use of a skin contact surface made up by the tips of the ribs (122) of the upper surface (120) of the guard member. The tips of the ribs (122) and the cutting members (as shown in Figure 7) are located on substantially

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the same plane, and therefore on the major axis of the cutting direction (from left to right)

It would have been obvious to have modified the modified device of Shaler to incorporate the teachings of Apprille to update the shaving apparatus by using a shaving head and a cutting member that incorporated a guard member for the purpose of protecting a user from hurting him or herself while using the shaving device. Since the Guard member is located on the major axis of the cutting direction of the shaver, the contact surface created by the guard member is substantially parallel to the major axis of the elliptical motion of the cutting member.

***Allowable Subject Matter***

16. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no teaching of a carrier member attached to the cutting member that has two eccentric members attached to the carrier with different free and fixed positions relative to the carrier parallel to the major or minor axis of the elliptical motion of the cutting member.

17. Claims 16, and 18-20 are allowed. Claim 16 is allowed because it includes all of the limitations found in claim 12 every preceding dependent claim and independent claim. Claims 18-20 depend on claim 16.

***Response to Arguments***

18. Applicant's arguments filed 2/27/2006 have been fully considered but they are not persuasive with regards to the drawing objection, the 112 1<sup>st</sup> rejection, and the 102(b) rejection based on Balamuth.

Claim 11 states that "at least one of the two motion portions of the first periodical motion and of the second periodical motion have different parameters." Though the two blades are offset from each other, both follow the same motion and follow the same movement parameters. There is no teaching that the movement of the two blades is different from the other. Furthermore there is no contact surface claimed, and the blades can just as easily be at the same distance from a potential contact surface as they can be at different heights from the contact surface.

In regards to the Balamuth rejection, Balamuth does teach the cutting member having elliptical motion transverse to the cutting direction. The cutting edges (44) extend the width of the shaver, and motion of the cutters is transverse to these edges.

19. Applicant's arguments with respect to claims 1-13 with respect to rejections made in view of Motta have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dato et al (U.S Patent No. 6,421,918), Davey (U.S Patent No. 5,794,342), Metcalf et al (U.S Patent No. 5,299,354), Kawara et al (U.S Patent No. 5,046,249), Kuris et al (U.S Patent No. 3,793,723), and Tiffin (U.S Patent No. 3,636,627) teach

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shavers with two distinct motions. Miller et al (U.S Patent No. 5,056,222) teaches a shaving unit with a skin contact member.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free):

EFL

4/17/2006

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700